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ABSTRACT

This legal handbook, developed at the reccmmendation of the 1970 Naticnal Education Association (NEA) fact-finding teams in Lcuisiana and Mississippi, describes the rights of teachers, with specific fccus on Mississippi. The introductory section lists 10 cautionary rules to assist a teacher if his employment status or security is treatened by arbitrary behavior of an administrator or schocl board. The four major sections each contain a series of questions with general answers based on the pclicies of state and lccal boards of education within the legal framework of state and federal statutes and constitutions and judicial decisions. Chapter 1 on "Personal Rights and Freedoms" answers 13 questicns regarding such topics as participation in civil rights activities and political activities, teaching black studies, and support of student protest activities. Chapter 2 on "Rights of Teachers Against Unreasonable Official Directives and Other Intrusions" covers seven sitcations, e.g., unlawful search of a teacher's belongings, the use of wiretapping. Chapter 3 on "Legal Protection Against Displacement as a Result of Desegration: The 'Singleton' Decree" explains eleven related issues such as filling of teacher vacancies following desegregation and related dismissal and demotions. Chapter 4, "Protections Against Unjust Dismissals, Demotions, and Reassignments" answers 21 questions, most covered by Mississippi law, e.g., contract, renewal, teachers' right to legal counsel. (JS)

Desegregation

and the Rights of Educators in Mississippi

A JOINT PUBLICATION
OF THE NEA
COMMISSION ON
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AND THE NEA OFFICE
OF GENERAL COUNSEL

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INTRODUCTION

In the early months of 1970, reports of National Education Association fact-finding teams in Mississippi and Louisiana revealed that in these states alone, hundreds of black educators had been displaced or faced the prospect of displacement--through such means as dismissals, demotions, and pressured resignations--as their school systems proceeded with desegregation. These reports also indicated that the personal liberties of such educators were being infringed upon and that they were being subjected to administrative and other official harassment as faculties became desegregated.

The two NEA fact-finding teams recommended that the National Education Association undertake action programs of organizational and legal assistance to prevent, and defend against, desegregation-related infringements on the rights of black educators. Because educators are insufficiently informed to fully recognize and effectively challenge violations of their legal rights, the teams also recommended that the Association prepare a legal handbook describing the rights of teachers in relevant areas of concern. This handbook responds to that recommendation, with specific focus on the state of Mississippi.

The rights of a teacher are defined by his individual contract, by the collective agreement, if one exists, and by the policies of his state and local boards of education--all within the legal framework of state and federal statutes and constitutions and judicial decisions. Because of the frequency of new court rulings, divisions of authority among courts, variations in the policies of local school authorities, and differences in the facts of each case, virtually every situation in which the legal rights of a teacher are in question is unique.

Legal rights may be and often are violated. If you have reason to believe that your legal rights have been infringed or threatened, you should immediately seek competent legal advice or contact your NEA representative to determine what kinds of remedial action are available and to obtain assistance in securing legal counsel if appropriate.

NEA believes, however, that some helpful orientation and guidance can be provided by collecting here, in one place, brief, general responses to questions of common concern. The discussion that follows is subject to the important qualification that the statements it contains are applicable as of the date of this publication. New judicial decisions and new constitutional provisions, statutes, and amendments may strengthen, weaken, or otherwise modify existing law. And there is much new law constantly being made in the areas of teacher rights and race discrimination.

If you are faced with the threat of dismissal, demotion, or other type of adverse employer action which you believe to be a violation of your legal rights, it is important to remember that the success or failure of future remedial action can, in substantial measure, depend upon the actions that you yourself take in dealing with the problem at its outset. A few cautionary rules may be of assistance to you if your employment status or security is threatened by arbitrary behavior of an administrator or school board:

1. If you are called to a meeting with your administrator which turns out to be an accusatory proceeding, do not discuss the matter and attempt to defend yourself

alone. Because your job or position may be at stake, the matter deserves careful consideration. You therefore should avoid making spontaneous replies to the charges. Request an adjournment of the meeting; then consult legal counsel or your NEA representative to discuss what your next steps should be.

2. Do not submit to your administrator or board any written statement that has not been reviewed by a person knowledgeable about your rights. Be sure that you retain copies of any written statements that you submit and of all correspondence related to your case, together with the postmarked envelopes containing correspondence mailed to you in connection with the case.

3. Be sure that any person who accompanies you to a conference with the administrator is willing to testify for you at a board hearing or in court proceedings if it should become necessary.

4. Do not postpone consulting your NEA representative and/or legal counsel in any circumstance in which you feel your job or your legal rights are in jeopardy. Early advice from a competent attorney, who may be able to negotiate an equitable settlement with your board, may save you the much greater expense and difficulty of a court suit.

5. When your employment status is in jeopardy, do not agree to any proposal offered by your school administration or board without first conferring with your NEA representative, legal counsel, or other person knowledgeable about your rights and the specific facts of your case.

6. Do not submit a resignation under any circumstances, unless the resignation is at your insistence and not that of the administration, without first conferring with your NEA representative or legal counsel.

7. Do not make any public pronouncements about your case.

8. Do not appear at any hearing or other accusatory proceeding, including a meeting with an administrator, to discuss accusations against you, unless accompanied by counsel or, if that is not possible, a teacher association representative.

9. Where you believe you are the victim of racial discrimination, you should bring your complaint, through your NEA representative, to the attention of the Civil Rights Division of the Department of Justice and the Office for Civil Rights, Department of Health, Education, and Welfare.

10. Should your employment status be threatened, you should call collect the NEA Office in Atlanta, Georgia at 404-523-2593. Your call should be made at the earliest possible time after you believe your rights have been threatened.

I. PERSONAL RIGHTS AND FREEDOMS

1. CAN SCHOOL AUTHORITIES DISMISS OR TAKE OTHER ADVERSE ACTION AGAINST A TEACHER BECAUSE HE HAS JOINED OR LED AN ORGANIZATION OF TEACHERS OR OTHER ORGANIZATION OF WHICH THE SCHOOL AUTHORITIES DO NOT APPROVE?

No. The courts have recognized that public employees, including teachers, have rights of free association under the First and Fourteenth Amendments to the United States Constitution, and that these rights extend to membership, leadership, and other lawful activities in an organization of teachers, including one which seeks to bargain collectively with the school board. Similar activities in other organizations, including civil rights organizations, are similarly protected.

These rights of free association may be vindicated in court against retaliation by school authorities, whether such retaliation takes the form of dismissal, failure to renew a contract, suspension, demotion, denial of salary increments, denial of privileges, or other adverse action.

2. DO EDUCATORS HAVE THE RIGHT WHEN OFF DUTY TO ASSOCIATE WITH POLITICALLY CONTROVERSIAL FIGURES?

Yes. The educator's right of free association, protected by the First and Fourteenth Amendments to the United States Constitution, extends to association with particular individuals as well as with groups or organizations. In NEA's view, an educator could not lawfully be dismissed or otherwise be the subject of adverse action by school authorities because of the mere fact that he associated with an individual who was the subject of political controversy.

3. DOES AN EDUCATOR HAVE THE RIGHT TO ENGAGE IN CIVIL RIGHTS ACTIVITY IF SUCH ACTIVITY IS CONTRARY TO THE WISHES OF THE SCHOOL AUTHORITIES?

Yes. Notwithstanding the wishes of the school authorities, an educator has the right to engage in any civil rights activity--including peaceful demonstrations and protests against racial discrimination--which does not conflict with valid state laws or local ordinances, or valid rules or policies of the school authorities, i.e., laws, ordinances, rules, or policies which are consistent with the federal Constitution and federal laws. No state law, local ordinance, or school system rule or policy could validly prohibit or restrict membership or leadership of a teacher or principal in a civil rights organization. Retaliation (whatever its form--see Question 1) for engaging in protected civil rights activity will be enjoined by a federal court, and damages are recoverable for any losses sustained.

4. DOES AN EDUCATOR HAVE A CONSTITUTIONAL RIGHT TO MAKE CONTROVERSIAL PUBLIC STATEMENTS OUTSIDE HIS SCHOOL?

Yes. Like any other citizen, an educator has the right to free speech and expression, subject to the qualifications set forth below. He cannot legally be retaliated against in any way by school authorities for exercising such protected rights through public speeches, letters to the editor, or other means. For example, school authorities could not dismiss or

fail to renew the contract of an educator for publicly opposing the war in Vietnam or publicly speaking out against racial discrimination.

The Supreme Court has held that an educator also has the right to voice his opinion on issues related to education in his own school district, even if his opinion is critical of his school board, foments controversy and conflict among school personnel, damages the reputations of his superiors, and--if the educator is not reckless or malicious--even if his statements are false. A school board can circumscribe an educator's right to publicize his views only if it is able to show a compelling need for confidentiality, or if his views are critical of a superior with whom the educator's working relationship is of such a personal and intimate nature that public criticism would destroy it.

5. DOES AN EDUCATOR HAVE THE RIGHT TO ENGAGE IN POLITICAL ACTIVITY?

In recent years, laws and school board regulations forbidding all forms of political activity by educators have been struck down by the courts.

With respect to particular types of political activity, NEA takes the position that an educator has the constitutional right to engage in the activity, provided that in so doing (a) he does not exploit his position as a public school employee or interfere with operation of the school system, and (b) the activity does not pose a conflict of interest of such magnitude as to warrant a restriction. Absent such factors, the educator, in NEA's view, has the right to seek and hold public office, to campaign for candidates, and to engage in other forms of political action.

With regard to conflict of interest, even though such a conflict conceivably might be posed where an educator serves in a particular office while also serving as an educator, there may be no conflict posed where the educator merely seeks the office, since he might lose and thus never hold the office, or win and then relinquish the office or his position as educator.

A teacher's participation in a school board campaign away from the school premises during off-duty hours ordinarily would not have the kind of injurious impact upon the school system that would justify the school board's interference. It is doubtful whether members of a school board maintain so intimate a working relationship with individual teachers that such campaigning would produce the type of disruption in the public service that would warrant its prohibition. The functions of a school board member are such that he normally cannot be characterized as a teacher's immediate superior. Indeed, a school board member rarely, if ever, has any direct contact with an individual teacher.

6. CAN A TEACHER SPEAK OUT ON CONTROVERSIAL ISSUES IN HIS CLASSROOM?

The courts have shown an increasing willingness to protect, under the umbrella of the First and Fourteenth Amendments, the teacher's "academic freedom" to discuss the topics and subjects he considers germane to the course in the way he chooses.

Of course, the teacher should be guided by considerations of good taste, the maturity of his pupils, and professional standards of relevance in electing to treat a controversial public issue in his classroom. Generally speaking, the teacher should be protected from censorship or reprisal by the school authorities if what he says or does in class satisfies the above criteria and if the time and emphasis placed upon the issue in question are not overly disproportionate, considering the nature of the course's subject matter and the time devoted to other work in the course.

7. TO WHAT EXTENT IS A TEACHER WHO TEACHES BLACK HISTORY OR INTRODUCES MULTIETHNIC INSTRUCTIONAL MATERIALS PROTECTED AGAINST DISCIPLINE OR REPRISAL BY SCHOOL AUTHORITIES?

Certainly a teacher of a general course in such areas as American or world history, literature, or government would be justified in devoting a reasonable proportion of his course to the history of Afro-Americans or to the works of black authors. On the other hand, the same justification would not extend to the teacher who converted his mathematics class into a black studies course. Here again, the teacher should be guided by professional standards of relevance and proportion.

Where state law or school system policies specify the employment of basic instructional materials, but allow the teacher to supplement those materials, the teacher would be protected by law from reprisal for introducing supplementary multiethnic materials. State laws or board policies forbidding teachers to use supplementary materials may be vulnerable to legal attack by teachers as infringements on academic freedom. And where the basic materials are oriented toward white children, the exclusive use of those materials can be challenged in court by parents of black children or others as racially discriminatory and perhaps by teachers as unreasonable intrusions upon their academic freedom.

8. IS AN EDUCATOR PROTECTED AGAINST DISMISSAL OR OTHER SANCTION IF HE REPORTS VIOLATIONS OF THE LAW WITH RESPECT TO THE OPERATION OF THE SCHOOL--SUCH AS MISALLOCATION OF TITLE I FUNDS OR VIOLATIONS OF DESEGREGATION ORDERS?

Yes. School authorities could not legally dismiss, fail to renew the contract of, demote, or otherwise discipline an educator merely for reporting a violation of federal or state law. An educator so disciplined would be entitled, through appropriate litigation, to reinstatement and back pay, and very possibly to punitive damages as well.

9. DOES AN EDUCATOR HAVE THE RIGHT TO WEAR A BEARD, MOUSTACHE OR GOATEE, TO WEAR HAIRSTYLES OF HIS OR HER CHOICE, AND TO DRESS AS HE OR SHE CHOOSES?

The NEA believes that educators have a constitutional right to exercise personal choice in matters of grooming and dress. The courts have ruled that school authorities would not be justified in disciplining a teacher for his mode of appearance, absent an affirmative showing of substantial disruption of the learning program.

10. TO WHAT EXTENT CAN AN EDUCATOR PARTICIPATE IN OR SUPPORT STUDENT PROTEST ACTIVITY?

If the student protest is peaceful, does not conflict with a valid state law or board policy, and does not interfere with the operation of the school, the educator generally, like any citizen, may participate in or support the protest. However, an educator ordinarily could not legally participate in the protest activities in lieu of fulfilling classroom or other duties under his contract. And if the protest interfered with the operation of the school system, the educator would face the possibility of disciplinary action if he participated. Although there are times when such protest activity may be both morally justifiable and strategically effective, it is important to recognize the risks involved.

11. DO TEACHERS HAVE THE RIGHT TO ATTEND SCHOOL BOARD MEETINGS?

The teacher, like any other citizen, has the right to attend public meetings of public governing bodies such as the school board and may participate and make his views known. State or local law or board rules may provide for executive sessions (closed to the public) for consideration of some matters. No school board, however, should conduct <u>all</u> of its business in secret.

If your local school board has not announced any meetings for a long time or if you have been turned away from meetings, you should notify your NEA representative.

12. WHAT REMEDIES DOES AN EDUCATOR HAVE IF HE IS SUBJECTED TO CRIMINAL ARREST FOR EXERCISING VOTING RIGHTS, RIGHTS OF FREE SPEECH, THE RIGHT PUBLICLY TO PROTEST, ASSEMBLE OR DEMONSTRATE, OR OTHER CONSTITUTIONALLY PROTECTED RIGHTS?

There are a number of remedies available to the educator. He may bring suit in state court against the police officials for false arrest and seek to recover damages and to have the record of the arrest expunged. He may sue the officers performing the arrest in federal court and seek to recover damages for their unlawful action under color of law. He may add the city officials and chief of police as defendants in the suit and seek an injunction against similar action by the police in the future.

Furthermore, the educator may complain to the Civil Rights Division of the Department of Justice or to the United States Attorney General and ask that the United States bring a civil action to enjoin the police from interference with voting rights under the Voting Rights Act of 1965, or that the Attorney General proceed criminally against the police for interference with federally protected rights. Federal law makes it a criminal act willfully to injure, intimidate or interfere with a person because he is or has been voting or qualifying to vote, participating in or enjoying any benefit provided by the United States, traveling interstate, etc. Additionally, federal law authorizes criminal prosecutions where the police act in conspiracy or individually to deprive a person of rights, privileges, or immunities secured or protected by the Constitution or laws of the United States.

13. DOES AN EDUCATOR EXERCISING OR CONTEMPLATING THE EXERCISE OF SUCH RIGHTS HAVE A REMEDY AGAINST THREATS OR REPRISALS BY PRIVATE INDIVIDUALS TAKING SUCH FORMS AS EVICTION, WITHDRAWAL OF CREDIT, OR FORECLOSURE OR REPOSSESSION OF PROPERTY?

The educator may bring a suit in state court and seek to recover damages and to have his property rights restored. If this course does not appear helpful, he may complain to the Attorney General of the United States. If the threat or reprisal was an action "by force or threat of force" which attempted to intimidate him or interfere with his voting or qualifying to vote or with his participation in a program administered by the United States, the private individuals would be subject to prosecution under a federal criminal statute. Private conspiracies to intimidate a citizen in the exercise of any right or privilege secured by the federal Constitution or laws are probably subject to criminal prosecution under another federal law. Private action intimidating, threatening, or coercing a person for voting or attempting to vote or for aiding another to vote may be prosecuted criminally by the Attorney General under the Voting Rights Act and may also be enjoined in a suit by the Attorney General.

A private right of action to enforce these rights in a civil suit has been implied from the statute. The Attorney General of the United States and private citizens, including educators, have similar authority to seek civil enforcement of rights guaranteed by the Fair Housing Act of 1968 and the Public Accommodations Title of the Civil Rights Act of 1964.

There is pending in the Supreme Court of the United States a case (Griffin v. Breckenridge) which presents the question of whether a private citizen may recover damages from private individuals who conspire upon racial grounds to deprive him of rights secured by the Constitution or state or federal laws.

II. RIGHTS OF TEACHERS AGAINST UNREASONABLE OFFICIAL DIRECTIVES AND OTHER INTRUSIONS

14. MAY A TEACHER'S PERSON OR BELONGINGS BE SEARCHED ON OR OFF THE PREMISES OF THE SCHOOL BY SCHOOL AUTHORITIES OR LAW ENFORCEMENT OFFICIALS?

The Fourth Amendment to the United States Constitution protects the person, papers, and effects of citizens--including teachers--against unreasonable searches and seizures. What is unreasonable will vary to some extent with the circumstances of each case.

For example, the personal contents of a teacher's desk or closet would be privileged against arbitrary search or seizure by school or law enforcement authorities.

School authorities probably are not lawfully entitled to make such searches and seizures for the purpose of seeking or obtaining evidence against the teacher or

facilitating the bringing of charges against him. If there is no such purpose, however, school authorities may authorize routine cleaning, inspection for combustibles under a legitimate fire regulation, and inspection of the premises of the school in the course of a search for school property.

School officials would have no authority to conduct searches of the person or belongings of a teacher off school premises.

Law enforcement authorities may search a teacher's desk, closet, or person if armed with a proper search warrant or if they have probable cause to believe that the fruits or evidence of a crime are being concealed there, and, in such circumstances, they may seize such fruits or evidence.

The requirements of obtaining a warrant or having probable cause are binding upon law enforcement authorities off as well as on the school grounds. These requirements may be particularly stringent as applied to the search of a teacher's home. A recent decision of the Supreme Court holds that it is unreasonable to search a person's home without a warrant unless the search is incident to a lawful arrest or unless one or more of the following circumstances are present: (a) the search has been consented to by the person responsible for the home; (b) the officers are responding to an emergency; or (c) the officers are in hot pursuit of a fleeing felon.

15. CAN A SCHOOL ADMINISTRATOR LEGALLY USE WIRETAPS OR OTHER ELECTRONIC DEVICES TO MONITOR HIS CONFERENCE WITH A TEACHER? A TEACHER-STUDENT CONFERENCE? A TEACHER'S CLASSROOM PERFORMANCE?

Section 605 of the Federal Communications Act makes it unlawful for a school administrator to use a wiretap to monitor his telephone conference with a teacher without first securing the consent of the teacher, if the administrator thereafter publishes the recording of the conversation. The applicability of Section 605 is avoided, however, if instead of tapping the telephone wire, the administrator uses some alternative form of electronic eavesdropping. Thus, it is probably lawful for an administrator to have a third person secretly listen to the conversation on an extension phone and take notes. Similarly, present court rulings do not render it unlawful for the administrator to use an electronic device to record his conversation with a teacher where the device does not involve an attachment to the wire or to the telephone instrument itself.

At present it is reasonably clear that a school administrator can secretly monitor face to face conversations with a teacher when the administrator has secured the approval of a judicial officer; it is unclear whether the administrator can lawfully take such measures without such prior approval.

It would be an unreasonable, and therefore unconstitutional, invasion of the privacy of both teacher and student for a school administrator to secretly listen in upon a conference between the teacher and the student.

It probably is not unconstitutional for an administrator secretly to monitor a class, although the NEA opposes any monitoring of classroom activities without the teacher's knowledge and consent.

16. MAY A TEACHER REFUSE TO SUBMIT TO A TEST USED BY A SCHOOL BOARD TO DETERMINE HIS QUALIFICATIONS TO TEACH?

A school teacher is not required to take a test which it is unconstitutional or otherwise unlawful for school authorities to give, e.g., a racially biased test, a test which is otherwise discriminatory or arbitrary, or a test which state law does not permit the school authorities to give. In Louisiana, it has been specifically held that a teacher may refuse to obey an order from a superior which is unreasonable, arbitrary, or capricious, without risking dismissal or discipline for willful neglect of duty.

Legal actions are in progress to determine the validity of particular uses and applications of the National Teachers'Examination and similar tests. Since a teacher who refuses to take a test which a court subsequently determines to be valid may face charges of neglect of duty, it is wise to consult with legal counsel or your NEA representative before deciding whether to take or refuse to submit to a test which you consider objectionable.

17. DOES A TEACHER HAVE THE RIGHT TO REFUSE ENTRY BY PERSONS INTO HIS CLASSROOM WITHOUT HIS PERMISSION?

The teacher is certainly not obliged to submit to interruption of his class by anyone with only a tenuous connection with the enterprise of the school. If, however, the school principal or other person in appropriate authority is conducting a teacher evaluation program for some legitimate purpose, the teacher probably is not privileged to refuse entry.

In Louisiana, it has been held that a teacher's repeated refusal to allow his supervisors to visit the classroom for the purpose of helping the teacher improve his effectiveness amounted to willful neglect of duty, one of the three statutory bases for removal or other discipline under the State Teachers' Tenure Act.

18. DOES A TEACHER HAVE A RIGHT TO REFUSE ENTRY TO OR TO EJECT FROM HIS CLASSROOM A STUDENT WHO IS HARASSING THE TEACHER OR OTHER STUDENTS WITH RACIAL SLURS OR EPITHETS OR FOR RACIAL REASONS?

As a general rule, it seems that a teacher does not have a legal right to use self-help to refuse a student entry or to eject him forcibly from his classroom under these circumstances. The preferable course would be for the teacher to seek the assistance of the principal or other administrative authority. In a situation where the harassment is being countenanced by the administration for a racially discriminatory purpose, the teacher would be best advised to lodge a complaint with the principal or the school board. If this complaint should go unheeded, the teacher has a remedy in federal court on grounds

that the administration is racially discriminating against the teacher by refusing to enforce discipline against students engaged in racially discriminatory harassment. The teacher should consult with his NEA representative for advice and aid in securing legal counsel to pursue a legal action.

19. CAN SCHOOL AUTHORITIES DISCIPLINE A TEACHER FOR REFUSING TO ANSWER QUESTIONS OF A SUPERIOR, REFUSING TO GIVE EVIDENCE AGAINST HIMSELF, OR REFUSING TO APPEAR WHEN SUMMONED TO A MEETING?

A teacher, like any other citizen, has the right to refuse to answer questions posed by law enforcement or school authorities if the answers may be used against him, and school authorities may not inflict a sanction for the exercise of this right.

Not every question of a police officer or superior, however, is designed to or will elicit answers which will reflect upon the teacher. For example, a school administrator necessarily must rely upon teachers for information about the operation and program of the school. A teacher would not be privileged to refuse to answer nonincriminatory questions posed by the administrator for this purpose.

A teacher may not refuse to attend a meeting to which he is summoned by his superior, unless the call to the meeting is arbitrary, unreasonable, or capricious; or unless the teacher has reasonable grounds for the refusal, such as illness, pregnancy, childbirth, or absence from the city with prior permission; or unless his contract or school board policies give him other grounds for the refusal.

20. MAY SCHOOL AUTHORITIES HARASS OR PERMIT HARASSMENT OF TEACHERS FOR RACIAL REASONS?

No. School authorities are forbidden by the Constitution to harass teachers in any way, or to permit such harassment by parents, students, or anyone else, for racial reasons.

III. LEGAL PROTECTIONS AGAINST DISPLACEMENT AS A RESULT OF DESEGREGATION: THE SINGLETON DECREE

21. WHAT PROTECTIONS DOES AN EDUCATOR HAVE AGAINST RACIALLY DISCRIMINATORY DISMISSAL OR DEMOTION AS A RESULT OF A REDUCTION IN FORCE INCIDENT TO SCHOOL DESEGREGATION?

Educators are protected by the federal Constitution against racial discrimination in the selection of those to be dismissed or demoted.

In addition, the federal court of appeals with jurisdiction over the Southern states of Mississippi, Louisiana, Alabama, Georgia, Florida, and Texas has issued guidelines, in the "Singleton decree," expressly providing that in the desegregation process staff members who work directly with children and professional staff on the administrative level will be

hired, assigned, promoted, paid, demoted, dismissed, and otherwise treated without regard to race, color, or national origin (see also answers to Questions 22 through 31). These guidelines generally are incorporated in school desegregation decrees issued by federal district judges in Mississippi.

22. IN THE EVENT OF SUCH A REDUCTION IN FORCE, WHAT PROTECTION DOES A TEACHER HAVE AGAINST ARBITRARY DISMISSAL OR DEMOTION BY THE SCHOOL AUTHORITIES?

The Singleton decree provides that if there is to be a reduction in the number of principals, teachers, teacher-aides, or other professional staff in the school district such as will result in a dismissal or demotion, the staff members to be dismissed or demoted must be selected "on the basis of objective and reasonable non-discriminatory standards from all the staff of the school district."

For example, the closing of a formerly all-black school pursuant to desegregation does not mean that the educators in that school must lose their jobs in the event the school system decides it is necessary to reduce the teaching force. Before educators are selected for dismissal, all educators in the district must be evaluated and the ones receiving the lowest evaluation may be dropped out.

Recently, the same federal court of appeals which promulgated the Singleton rules handed down an important qualification to this evaluation requirement. In Carter v. West Feliciana Parish School Board, the National Teachers' Examination was attacked as racially biased in the context of its possible use in determining which teachers would be released in the event of a reduction in force. The court of appeals, however, found it unnecessary to reach this question because, it held, any reduction in force had to be made in a manner which would not change the ratio of black and white teachers in the system. Accordingly, the court of appeals approved the district court's ruling that the scores of white teachers could be compared, and the scores of black teachers could be compared, but that there could be no cross-comparison of scores.

23. WHAT IF THERE IS A DISMISSAL OR DEMOTION INCIDENT TO SCHOOL DESEGREGATION AND A VACANCY THEREAFTER ARISES IN THE SYSTEM?

Under the Singleton decree, the vacancy may not be filled through recruitment of a person of a race, color, or national origin different from that of the individual dismissed or demoted, until each displaced staff member who is qualified has had an opportunity to fill the vacancy and has failed to accept an offer to do so.

24. WHAT CAN TEACHERS AND PRINCIPALS DO TO ENSURE THAT THE SELECTION OF PROFESSIONAL STAFF FOR DISMISSAL OR DEMOTION INCIDENT TO SCHOOL DESEGREGATION IS IN FACT MADE ON THE BASIS OF "OBJECTIVE AND REASONABLE NONDISCRIMINATORY" CRITERIA?

The Singleton decree requires that prior to any staff reduction the school board must

develop or require the development of nonracial, objective, and reasonable criteria to be used in selecting the staff member who is to be dismissed or demoted. These criteria must be available for public inspection and must be retained by the school district. Teachers and principals may request that such criteria in fact be developed and retained, and may insist upon their right to inspect the criteria.

If the authorities have not adopted such criteria or will not make them available for public inspection, or if the criteria developed are not objective, reasonable, and nondiscriminatory, a court action could be filed to compel compliance with the law. (See also answer to Question 22.)

25. HOW CAN AN EDUCATOR WHO HAS BEEN DISMISSED OR DEMOTED INCIDENT TO SCHOOL DESEGREGATION KNOW IF THE SCHOOL AUTHORITIES HAVE IN FACT EVALUATED ALL TEACHERS IN THE SYSTEM?

Under the Singleton decree, the school district must record and preserve the evaluation of staff members based on the objective, nonracial criteria it has developed. Such evaluations must be made available upon request to the dismissed or demoted employee.

Singleton, however, now must be read in light of the court's later decision in Carter v. West Feliciana Parish School Board, which requires that pre-existing ratios of black to white teachers be maintained when the school district reduces its teaching force. (See answer to Question 22.) In Carter, it was held necessary for the school board to compare black teachers with other black teachers and whites with other white teachers in determining who would be dismissed in the event of a reduction in force. This would not be discriminatory, the court said, in effect, provided that the criteria used were objective and reasonable. (In this latter connection, see answer to Question 29.)

26. WHAT DOES THE WORD "DEMOTION" MEAN AS USED IN THE SINGLETON DECREE?

"Demotion" includes "any reassignment (1) under which the staff member receives less pay or has less responsibility than under the assignment he held previously; (2) which requires a lesser degree of skill than did the assignment he held previously; or (3) under which the staff member is asked to teach a subject or grade other than one for which he is certified or for which he has had substantial experience within a reasonably current period. In general, and depending upon the subject matter involved, five years is such a reasonable period."

27. WHAT IS AN "OBJECTIVE" STANDARD WITHIN THE MEANING OF THE SINGLETON DECREE?

The court in Singleton did not attempt a definition of the term "objective." From its context in the court's opinion, however, it is probable that the court was using the term in an effort to square the selection process with the requirements of the due process and equal protection clauses of the Fourteenth Amendment. These provisions would mandate a standard which is rational, explicit, free from arbitrariness, and not so broad or general as to force men of common intelligence to guess at its meaning.

28. CAN NEW AND HIGHER QUALIFICATIONS BE IMPOSED AS DESEGREGATION IS BEING IMPLEMENTED?

Not if such qualifications are, in effect, disguises for discriminatory removal of black educators from the newly desegregated system.

Several federal courts in the judicial circuit in which Mississippi is located have indicated that a long history of racial discrimination by the school system, coupled with disproportionate discharges in the ranks of black teachers where desegregation finally is begun, gives rise to a strong inference of discrimination against black teachers.

29. CAN A SCHOOL SYSTEM REQUIRE IN-SERVICE TEACHERS OR APPLICANTS FOR TEACHING POSITIONS TO ACHIEVE A MINIMUM SCORE ON THE NATIONAL TEACHERS' EXAMINATION OR OTHER TEST AS A CONDITION OF RETENTION OR EMPLOYMENT?

As of the date of this publication, there is no court decision precisely on this point. NEA, however, has taken the position in pending litigation that such minimum test score requirements are not closely related to the classroom competence of teachers and are therefore invalid as an exclusive basis for disqualification.

The court which decided Singleton recently decided that use of scores on a standard subject-matter achievement test as one of the criteria to be employed in determining which teachers, if any, are to be dismissed represents a permissible selection of an "objective and reasonable" standard.

Whether the use of an automatic cut-off score on such a test is permissible or whether such a test can be used as the only criterion for disqualification or dismissal is doubtful, in NEA's view, particularly where the results disproportionately affect black teachers. These questions remain to be answered in other litigation.

To the extent, however, that the school system is reducing its staff and uses the test results to determine which teachers to dismiss, the school system would violate the ruling in Carter v. West Feliciana Parish School Board, unless it maintained the existing ratio of black to white teachers (comparing the scores of black teachers against the scores of other black teachers, and the scores of white teachers against the scores of other white teachers, but without any cross-comparison of scores).

30. DOES THE SINGLETON DECREE SUPERSEDE PROTECTIVE REQUIREMENTS OF STATE LAW?

The U.S. Court of Appeals for the Fifth Circuit has recently held in a case arising in Louisiana that the requirements of Singleton supersede the Teachers' Tenure Act in that state. The court's opinion does not discuss this point at any length. The reach and full meaning must await further decisions in the same area.

31. MANY BLACK EDUCATORS ARE DISMISSED OR DEMOTED AFTER THEIR SCHOOLS HAVE BEEN PHASED OUT OR CLOSED. CAN BLACK EDUCATORS DO ANYTHING TO SECURE THE CONTINUING USE OF ADEQUATE EXISTING FACILITIES?

Some courts have required school authorities to maintain in use adequate formerly black school facilities which the school authorities were planning to phase out or close as part of a desegregation plan. Educators assigned to such schools may have the right, along with parents of children attending such schools, to similar relief in the courts.

As indicated in the answer to Question 22, educators assigned to a school phased out or closed as part of a desegregation plan must be evaluated and compared with all other educators of the same race in the school system if any educator is to be dismissed or demoted as a result of a reduction in force incident to such desegregation.

IV. PROTECTIONS AGAINST UNJUST DISMISSALS, DEMOTIONS, AND REASSIGNMENTS

32. WHAT PROTECTIONS DO EDUCATORS HAVE AGAINST RACIALLY DISCRIMINATORY DISMISSALS, DEMOTIONS, AND OTHER TYPES OF DISCRIMINATION BY THEIR SCHOOL BOARDS?

Racial discrimination by a public employer is forbidden by the Constitution of the United States. This means that public school educators must be hired, assigned, promoted, paid, demoted, dismissed, and otherwise treated without regard to race or color.

In addition, there may be a federal court order entered in a school desegregation suit filed in your district prohibiting such discrimination. The rights created by the federal Constitution, as well as by previous federal court orders, may be vindicated through a lawsuit to stop the wrongful action. Damages may also be sought.

33. WHEN DOES A BOARD OF EDUCATION HAVE THE LEGAL RIGHT TO FIRE AN EDUCATOR?

During the life of his contract, a teacher or principal in Mississippi is protected against outright dismissal except for "incompetence, neglect of duty, immoral conduct, intemperance, brutal treatment of a pupil or other good cause." An educator fired in violation of this statute would be entitled to reinstatement and damages, at least to the extent of his lost wages.

In addition, the due process clause of the Fourteenth Amendment to the federal Constitution prohibits the arbitrary termination of the contract of an educator--tenured or probationary--during its term. An arbitrary termination would include the firing of a teacher for no reason, or, for example, because he is a Democrat or a Republican. It would also include a firing for an asserted reason which has no basis in fact.

In Mississippi, where the contract is to run for more than one year, the contract must stipulate that for the years after the first, the teacher may be released if...the average daily attendance should decrease from that existing during the previous year and thus necessitate a reduction in the number of teachers...." Such a provision must be in the contract if the teacher is to be fired on this ground.

34. CAN AN EDUCATOR LEGALLY BE DISMISSED BECAUSE HE HAS BEEN CONVICTED OF A TRAFFIC VIOLATION OR MISDEMEANOR? CAN HE BE SUSPENDED BECAUSE A CRIMINAL CHARGE IS PENDING AGAINST HIM?

In Mississippi, an educator may be removed "for incompetence, immoral conduct, intemperance, brutal treatment of a pupil or other good cause...." Whether an educator in Mississippi may be dismissed because he has been convicted of a traffic offense or misdemeanor or suspended because a criminal charge is pending against him would depend upon whether the Mississippi courts construed this statute, including the term "other good cause," to permit such dismissal or suspension.

Dismissal or suspension of an educator for a traffic violation or misdemeanor conviction or his suspension because of the pendency of a criminal charge would be arbitrary and, in NEA's view, would violate the Constitution if no relationship between the offense and his teaching effectiveness could be shown.

35. WHAT PROCEDURAL PROTECTIONS DOES A TEACHER HAVE AGAINST DISMISSAL DURING THE CONTRACT TERM?

In Mississippi, removal may be accomplished only after a hearing is held on one or more of the statutory charges (see Question 33). The teacher is entitled to ten days' advance notice of the hearing. Where the contract is to run more than one year and a teacher is released because of a reduction in force necessitated by a decrease in average daily attendance, the teacher--pursuant to a contract provision mandated by state law--"must be released before July 1 or at least thirty days prior to the beginning of the school term, whichever date occurs earlier." If the school board does not comply with these provisions, the board may not have the authority to release the teacher.

In addition, before a teacher--whether tenured or probationary--can be fired during the contract term, the federal Constitution requires notice and a hearing.

36. WHEN DOES A BOARD OF EDUCATION HAVE A LEGAL RIGHT TO DEMOTE AN EDUCATOR?

Mississippi has no Code provision dealing with demotions. A demotion, however, may violate the terms of the contract, in which case the educator's contractual rights could be vindicated in state court by a suit for reinstatement and back pay.

In addition, the federal Constitution forbids racially-motivated demotions (see Question 32) and may forbid an otherwise arbitrary demotion of an educator. (See Question 33 for examples of arbitrariness.)

37. WHAT PROCEDURAL PROTECTIONS DOES AN EDUCATOR HAVE AGAINST A DEMOTION?

A principal or teacher may be removed from his position during the life of his contract only upon a hearing held on one or more of the statutory charges (see Question 34). "Removal" would include a demotion to a position of lesser pay, status, or responsibility. Notice of the charges must be given at least ten days in advance of the hearing.

In addition, the federal Constitution may forbid a demotion during or after the contract term without notice and hearing.

38. MUST A SCHOOL BOARD FURNISH A TEACHER ITS REASONS FOR FAILING TO RENEW HIS CONTRACT? IF SO, MUST THE BOARD HAVE EVIDENCE IN SUPPORT OF, AND AFFORD THE TEACHER AN OPPORTUNITY FOR A HEARING IN REGARD TO, ITS ALLEGED REASONS?

Mississippi law imposes no obligation upon a school board to furnish its reasons for failing to renew a contract.

The U.S. Court of Appeals for the judicial circuit which includes Mississippi has held, however, that the federal Constitution requires a school board to furnish to a teacher its reasons for his nonreemployment where the teacher, by virtue of a school district's policies or practice, has an "expectation of re-employment." While the courts have not yet made clear what facts are essential to the existence of such an expectation, one recent court decision holds that long continuous employment (twelve years in this instance), through the use of short term renewals, was sufficient to make out the existence of the expectancy.

Under the court of appeals decisions, where such an expectancy does exist, the Constitution requires the board to have a basis in fact for the reasons relied on for not renewing the contract. The board must provide timely notice to the educator of those reasons, along with the names of the witnesses the board intends to rely on to establish the facts behind those reasons. And a hearing by a tribunal with the appearance of impartiality must be held to determine the disputed facts and make a record of the proceedings which can be used for review in court.

Where there is no expectation of reemployment, but the educator believes that the nonrenewal of his contract is a form of punishment for exercise of constitutional rights "or otherwise constitutes an actionable wrong," the educator has the right to initiate formal administrative proceedings. He must give timely notice to the school authorities of his claim of wrongful nonrenewal. Thereafter, a hearing must be held before a tribunal of apparent impartiality and must afford the teacher the right to produce witnesses and evidence and the right to confront and cross-examine witnesses for the school authorities. And there must be a record made of the hearing.

39. MUST A SCHOOL BOARD NOTIFY A TEACHER BY ANY SPECIFIC DATE WHETHER HE WILL BE REEMPLOYED?

Mississippi law does not impose any obligation to rehire a teacher after the term of his contract. And the Mississippi statutes do not require that the board declare in advance its intention not to renew a contract.

The Constitution, however, may impose an obligation upon the school board to notify a teacher of the nonrenewal of his contract in sufficient time to afford him a reasonable opportunity to find other employment.

40. IS A SCHOOL BOARD REQUIRED TO FURNISH A WRITTEN, SIGNED CONTRACT TO THE TEACHER EACH YEAR? IF SO, MUST THE CONTRACT BE ISSUED TO THE TEACHER BY ANY SPECIFIC DATE?

Mississippi law contemplates that teachers be furnished with written, signed contracts each year. It does not establish any specific date by which contracts must be sent to teachers. The statutes, however, contemplate that all administrative action in the normal course of reemployment of teachers will be completed by May 1. The superintendent issues contracts thereafter. Evidently the superintendent is expected to act promptly, because the contract offer can be withdrawn if not executed by the teacher in ten days, and the superintendent is to report the execution of such contracts at the "next regular meeting of the county board," which is held in the first week of July.

41. DOES AN EDUCATOR HAVE THE RIGHT TO REPRESENTATION BY COUNSEL AT A HEARING TO DETERMINE WHETHER HE SHOULD BE DISMISSED OR DEMOTED?

Although the Mississippi Code contains no express provisions for the right to retain counsel in connection with a hearing required by state law to determine the validity of charges against an educator, the Code does provide the educator with the right to a public hearing on the charges and the right to compulsory attendance of witnesses. A court might well feel that the right to be given a hearing and to examine and cross-examine witnesses cannot effectively be realized without the assistance of counsel.

Where the hearing is required as a matter of due process by the federal Constitution, the right to counsel of the educator's choice probably must be afforded.

42. DOES A TEACHER HAVE THE RIGHT TO EXAMINE HIS OWN PERSONNEL FILE?

When a teacher is preparing his defense to charges made by an administrator or is bringing a suit in a court, he may be entitled as a matter of right to examine his personnel file.

State law does not confer upon a teacher a general right to examine his personnel file. The policies of a particular school board, however, may confer such a right.

43. DOES A TEACHER HAVE THE RIGHT TO REFUTE ADVERSE ENTRIES MADE A PART OF HIS PERMANENT RECORD?

If an administrator or school board, in proposing to dismiss, demote, or suspend a teacher or not renew his contract, relies on statements in the teacher's record, the teacher has a right to submit evidence in refutation of those statements during any hearing held in conjunction with such proposed dismissal, demotion, suspension, or contract nonrenewal.

If no such use is made of entries in the teacher's record, there is no general right to have refutations included, although the rules or policies of a particular school board may confer such a right. In any event, the teacher may and should request that his refutation be included in his file.

44. MAY A TEACHER BRING A WITNESS OR A TAPE RECORDER TO A TEACHER-ADMINISTRATOR CONFERENCE?

NEA believes that a teacher has this right, if the conference is to be one in which charges will be made or a decision reached affecting the teacher's employment.

The teacher should ask in advance what will be taken up at the conference and whether a record will be made of the proceedings. If the answer indicates that the administrator intends to discipline the teacher or to explore charges against him, the teacher should request that he be allowed to have a witness (preferably an attorney or a teacher association representative) present at the conference. If the teacher's request is denied, he should refuse to discuss the matter.

45. DOES AN EDUCATOR HAVE A LEGAL RIGHT TO KNOW THE NUMBER OF DAYS TO BE WORKED AND THE AMOUNT OF COMPENSATION TO BE RECEIVED WHEN ENTERING INTO A CONTRACT?

The Mississippi Code expressly provides that the contract show not only the name of the school and the position held (whether principal or teacher) but also the length of the school year and the total amount of the annual salary and how it is payable.

46. IS A TEACHER LEGALLY REQUIRED TO ACCEPT A TRANSFER OR REASSIGNMENT TO A POSITION FOR WHICH HE IS NOT PREPARED OR CERTIFIED, OR WHICH IS DIFFERENT FROM THE SUBJECT AREA OR GRADE LEVEL TO WHICH HE HAS BEEN ASSIGNED IN THE PAST?

If the teacher's contract provides that his services are to be rendered at a particular school or in a particular class or subject, school authorities may not vary these terms without rendering themselves liable to damages or other appropriate remedy. If, on the other hand, the contract provides that the teacher shall have such duties as the superintendent or other such authority shall assign without committing the school authorities to a particular place or subject matter, the teacher probably would be obliged to accept

duties reasonably compatible with his professional attainments at any school under the charge of those authorities.

Since state law imposes no obligation to rehire a teacher after expiration of the contract term, the board would not be obliged, if it did rehire, to assign the teacher to any particular school, subject matter, or grade. Such matters typically have been handled by negotiations between the parties.

Such reassignments, however, if arbitrary (see Question 33), may run afoul of the federal Constitution.

47. DOES A TEACHER HAVE THE RIGHT TO A HEARING BEFORE BEING TRANSFERRED OR REASSIGNED TO SUCH A POSITION?

The Mississippi Code does not afford the teacher whose contract permits such a transfer or reassignment, or whose contract term has ended, the right to a hearing. The federal Constitution, however, may afford some procedural protection against arbitrary transfers, i.e., transfers either wholly unreasoned or premised upon reasons which have no basis in fact.

48. ARE TEACHERS WHOSE CONTRACTS IDENTIFY THEM AS "TITLE I," "PROJECT," OR "ESEA" TEACHERS PROTECTED AGAINST DISMISSAL OR DEMOTION WHEN FEDERAL FUNDS ARE EXHAUSTED?

Probably. We have found no provision in the Mississippi Code that such teachers may be dismissed or demoted upon exhaustion of federal funds. On the contrary, the Code suggests that the source of funds does not limit the length of the contract, since the Code itself specifies the contract term.

If the insertion in the contract of the designation "Title I," "project," "ESEA," or other such term were intended to limit the duration of the employment to such time as funds from that source were available, and this were so understood by the teacher, a court might conclude that the length of the contract term as specified in the contract was qualified by agreement of the parties. The result would be that the teacher would have no guarantee of employment upon exhaustion of the federal funds. However, it would generally take more than the mere insertion of a clause such as "This contract /of a specified duration/ will be funded out of ESEA funds" to put the teacher on notice that he was entering into a contract with a serious qualification upon its otherwise clearly stated duration.

49. ARE SUCH TEACHERS AFFORDED ANY ADDITIONAL PROTECTION WHERE THEY ARE TEACHING REGULAR CLASSES?

The fact that such a teacher is assigned to teach "regular" or nonproject classes would tend to support the contention that it was the understanding of the parties to the contract that the teacher would be a full-fledged teacher for the whole contract term, regardless of the source of the money, and not merely an adjunct to the traditional program of the school.

50. CAN A TEACHER REFUSE REASSIGNMENT TO THE STATUS OF A "TITLE I," "PROJECT," OR "ESEA" TEACHER?

Yes, if the reassignment occurs during the contract term and conflicts with the teacher's contract.

The federal Constitution forbids racially discriminatory reassignment to "Title I," "project," or "ESEA" status. To the extent that the Constitution affords protection against arbitrary demotions (see Question 33) or arbitrary reassignments (see Question 46), such protection would extend to arbitrary reassignment to "Title I," "project," or "ESEA" status.

51. WHAT RELIEF CAN A TEACHER OBTAIN FROM A COURT IF HE IS DISCHARGED OR SUBSTANTIALLY DISADVANTAGED CONTRARY TO HIS RIGHTS?

Courts have broad remedial powers which include the power to require a school board to reinstate a teacher with back pay and to order that an invalid charge be expunged from the teacher's record.